cause after the union with Scotland the necessity for such recognition became patent, and the same thing applied to a considerable extent to corporations created by colonial legislatures. Then, too, as Professor Maitland has more than once suggested, the tremendous and on the whole most salutary extension of trusteeship under the law of England made it often unnecessary to consider with care the position and the character of corporate bodies.

Second question: Is it necessary to treat a corporation either as a mere fiction or as being a person in the same sense as is a human being?

On this point the suggestions of Mr. Henderson are most important. It is impossible for me to say that I completely agree with the language he has used. I doubt whether in discussing the sort of legal problems with which his book deals any two persons would ever use precisely the same terms. In truth, the language which a writer on law is compelled to use consists to a great extent of words, such as a right, a person, an interest, a corporation, and the like, which have a popular, and, therefore, a vaguer sense. No man can make himself intelligible if he departs utterly from this sense, or makes to himself a series of carefully defined terms which he treats as the real meaning of the words he uses. If this be carried out beyond very narrow limits, he will find that he has created a language of his own far inferior to the current language of every-day life in its impressiveness and needing, if it is to be understood, systematic translation.

Third question: Is it not of primary importance to remember in dealing, *e. g.*, with a foreign corporation, that though corporate rights do distinctly differ from the ordinary rights of the group of individuals who make up the corporation, yet the persons whose interests are affected are such group of individuals?

That this inquiry must be answered affirmatively I am, as at present advised, inclined to agree with Mr. Henderson, who clearly emphasizes the difference between the corporate body and the group whose interests are affected. But my own inclination is to go a little further than he does, or perhaps rather to enter upon a path which he has not fully pursued. My belief increases every day that there are "natural corporations," if the expression may be allowed, that is, groups of persons who act together for different objects, some good and some bad, and on account of their acting together have many feelings, and do many actions which they would not entertain, and which they would not perform were it not for this habit of common action and common sentiment. This is what may be termed "corporate consciousness," and in my judgment the gravest mistake made both by English courts and by the British Parliament has been always, where possible, to incorporate such natural corporations when their aims are not injurious to the state, and, on the other hand, to treat such natural corporations as illegal where their aims are palpably injurious to the state. But I cannot at the moment express this idea with the accuracy and the reservations which it requires. I trust that at some future day I may be allowed to work it out with more fullness in the HARVARD LAW REVIEW. Meanwhile I hope that your readers will study, and I may be able to re-study, Mr. Henderson's masterly essay.

A. V. DICEY.

JUDICIAL TENURE IN THE UNITED STATES. With especial reference to the tenure of federal judges. By William S. Carpenter. New Haven: Yale University Press. 1918. pp. ix, 234.

In the classifications which academic organization has imposed upon us, judicial tenure no doubt belongs in the domain of politics. But personnel, mode of choice, and tenure of judges are not the least item in any effective program for the improvement of judicial administration of justice in this

country. Hence one could wish, if we cannot hope for help from one who is a student both of law and of politics, that some lawyer would take up the subject in thoroughgoing fashion. Until he does, Dr. Carpenter's little book will be useful.

Although our political theory puts the legislative, the executive, and the judiciary as coequal in authority, with nothing before and nothing after, at first the hegemony was distinctly in the legislative, whence it passed in time to the judiciary, and has now in turn passed to the executive. In the earlier part of our political history, legislatures were fully persuaded that the other departments, if accountable ultimately to the people, were directly and immediately accountable to them. In part this may have been due to the example of the British Parliament. In part it may have been due to the term "representative," which made the legislator seem and feel peculiarly the agent of the people. But this legislative supremacy derived its strength from the proved primacy of the legislative in colonial America, before the days of judicial justice and modern courts, and when the executive represented a government across the water. Accordingly in the first half of the last century legislatures believed themselves competent to call the judges to account directly for their decisions and to interfere as of right with the disposition of particular controversies. Indeed the first half of the century had gone by before legislative appellate jurisdiction was wholly done away with. Perhaps the last echoes of the claim that the other departments were directly and immediately responsible to the legislative are to be found in the debates over the impeachment of Andrew Johnson.

Next, for a season, and notably from the Civil War down to the first decade of the present century, the courts achieved a definite leadership, claiming to interpret and apply a higher body of law, merely declared in the Constitution, to which legislative and executive were subject and by which their acts must be measured. The legislative no longer made extravagant claims and the claim of the executive to be the peculiar mouthpiece of public opinion and to enforce the popular will upon legislators and courts was yet to come. For nearly half a century the judicial hegemony was scarcely disputed. Many things have combined to work a change. The pressure on judicial administration from the rise of new interests clamoring for recognition; the pressure of social legislation, not only causing jealousy of the common-law doctrine of supremacy of law, but often straining the elastic possibilities of the bill of rights; the pressure of demands for freer application of law involved in the multiplication of public utilities, — all these would have made it hard for the American judiciary to maintain its hegemony in any case. Only strong courts, such as those which built it up could have preserved it. Not the least factor was the inability of our state courts to do the work before them and the growth of executive boards and commissions with continually increasing measure of jurisdiction as a consequence. And this inability to deal adequately with a series of new problems, in striking contrast with the creative work of the classical period of American law, coincides with a gradual but definite decline in the caliber of the state courts, as a whole, which followed the general shift to an elective bench.

It is at this point that Dr. Carpenter's work is least satisfactory to the lawyer. He dismisses a suggestion that the decline in judicial constructive power, which has made it seem sometimes that our common-law tradition was stricken with sterility, is connected with the popular election of judges by saying that "it would be very interesting if proof could be shown in support of this contention" (pages 210–11). The proof is at hand in the law reports for those who realize that there is more to be done in supreme courts than to decide constitutional questions, and more to be done in courts of first instance than to prosecute felons. It must be remembered that American law all but

made a complete new start at the beginning of the nineteenth century. American judges then did their share in working out conceptions that are now received among English-speaking peoples. They helped to incorporate the law merchant in the common law. Kent and Story helped to develop and systematize equity while Eldon was still chancellor. In 1850, while the English cases were still going on the forms of action, Chief Justice Shaw worked out the modern doctrine as to negligence in advance of the common-law world and in enduring fashion. The achievements of the classical period of American law, the period of the great appointive state courts prior to the Civil War, will stand with those of any period of growth and adjustment in legal history. The courts of to-day, with abundant experience at hand in the reports, with an apparatus of organized legal knowledge easily accessible, are externally much better equipped to meet problems that are relatively no more difficult. If they do not meet them adequately, may we not with good reason inquire as to the men behind the machinery? This is no place to argue the point. It is enough to say that if no one but a lawyer is competent to treat it, no one but a lawyer is competent to complacently wave it aside. And as to the voucher of *Borgnis* v. *Falk*, 147 Wis. 377, one might suggest a comparison with *State* v. *Kreutzberg*, 114 Wis. 530, 537, and *Nunemacher* v. *State*, 129 Wis. 190, 198–203, and a query whether the moral of these decisions may not be Mr. Dooley's proposition that "The Supreme Coort follows th' iliction rethurns." Some recent opinions in North Dakota and the marked increase in opinions written for the newspaper rather than for the law report since the advent of the direct primary, might also be studied profitably in this connection.

It is not fair to Dr. Carpenter, who has done his work well from the political side, to hold him too rigidly for an incidental incursion into strictly legal history. And yet this inability of the student of politics apart from law to appreciate the most significant of his materials deserves to be emphasized quite as much as the inability of the lawyer *simpliciter* to use valuable materials for his purpose, of which we have heard so much.

ROSCOE POUND.

STATE OF CONNECTICUT: FOURTH REPORT OF THE BOARD OF COMPENSATION COMMISSIONERS FOR THE YEARS 1917 AND 1918. Hartford. 1918. pp. 34.

The recognition of industrial accidents as a legitimate part of the expense of industry brings many things in its train: a new relation between employer and employed, care for the safety of the workman; and as that proves to be rather profitable, care of his general health as well, and of his social welfare. This report shows part of the process. In a state having more than half a million workmen, with over twenty thousand accidents coming under the act (nearly 95 per cent of which were amicably settled), voluntary aid was given by the employers in about three-quarters of a million accidents. Nearly two million dollars were paid out in compensations; but three-fourths as much was paid in medical or surgical aid, in cases where no compensation was due. One-half of all the employers reporting on the subject had an emergency hospital at the place of employment; almost every large plant furnished first aid; about seventy nurses were reported as in constant attendance. These facilities would hardly have been furnished in such large measure unless they paid; they minimized accidents, prevented infection, and kept the employees at work.

This report does not show the great extent of other similar agencies. What is broadly called "welfare work," preventive work, not curative, is widely employed in the industries today; and it pays. The weakest part of the workmen's compensation acts is the employment of the unfortunate word "accident," or whatever phrase takes its place. If an industrial accident is part of the cost of industry, so surely is an industrial disease. The Connecticut Commissioners